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MEMORANDUM ENDORSED

STATE OF NEW YORK

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**BY FAX: (212) 805-4268**

Honorable Gabriel W. Gorenstein  
 United States Magistrate Judge  
 United States Courthouse  
 Southern District of New York  
 500 Pearl Street  
 New York, New York 10007

Re: Paulino v. Carrion, 07 CV 05773 (LAK)

Dear Judge Gorenstein:

Pursuant to Your Honor's Individual Rule 2A, I write to respectfully request a pre-motion conference. Briefly, the nature of the anticipated motion is a Rule 12(c) motion for judgment on the pleadings and a request for a stay of discovery pending its determination..

December 10, 2007

LESLIE G. LEACH

Executive Deputy Attorney General  
 Division of State Counsel

JUNE DUFFY

Assistant Attorney General in Charge  
 Litigation Bureau

The pre-hearing conference requirement is waived for the proposed motion for judgment on the pleadings. This motion may be combined with a motion for a stay of discovery and should be filed promptly.

SO ORDERED: DATE: 12/10/2007

GABRIEL W. GORENSTEIN  
 UNITED STATES MAGISTRATE JUDGE

### Background

On February 20, 2006, State defendant charged plaintiff with violations of State regulations as a result of an incident on October 5, 2006, in which plaintiff spilled hot coffee on a three year old child's face and abdomen "resulting in first and second degree burns to the child." Statement of Charges, dated February 20, 2006 (referenced in Complaint ¶¶ 33-35). According to plaintiff, she was offered a stipulation of settlement by State defendant and, in order "to avoid an administrative hearing," *id.* ¶ 34, plaintiff "signed the stipulation and submitted it with a check for [payment of the] \$400 [fine]," after first consulting with a bi-lingual manager of City defendant. *id.* ¶ 35.

Plaintiff now brings this action pursuant to 42 U.S.C. § 1983, seeking a judgment, *inter alia*, "[v]acating the stipulation of settlement and directing OCFS to hold a hearing on the allegations in the Statement of Charges." Complaint at 11 (¶ 4). The gravamen of plaintiff's case is her claim that defendants violated her due process rights by failing to translate the stipulation into Spanish and her allegation that for this reason she did not understand the document. See Complaint ¶ 1. While plaintiff's prior course of conduct would appear to be inconsistent with this claim, even assuming, *argued* (for purposes of this motion only), that it is correct, under applicable law, defendants should be granted judgment on the pleadings.

### Basis of Motion

This Court lacks subject matter jurisdiction over this action. "The first inquiry in any §